

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:90-00064

TERRY WAYNE KIRBY

SUPERVISED RELEASE REVOCATION AND JUDGMENT ORDER
MEMORANDUM OPINION AND ORDER

On May 20 and 21, 2015, the United States of America appeared by Joshua C. Hanks, Assistant United States Attorney, and the defendant, Terry Wayne Kirby, appeared in person and by his counsel, Gary A. Collias, for a hearing on the petition on supervised release submitted by United States Probation Officer Douglas W. Smith. The defendant commenced a twenty-four month less one day term of supervised release in this action on December 14, 2011, as more fully set forth in the Supervised Release Revocation and Judgment Order entered by the court on November 16, 2010.

The court heard the evidence of the witnesses, admissions of the defendant and the representations and argument of counsel.

For reasons noted on the record of this proceeding, which are ORDERED incorporated herein by reference, the court found by a preponderance of the evidence that the defendant has violated the conditions of supervised release in the following respects: (1) the defendant committed the federal offense of being a felon in possession of a firearm and the state offense of being a prohibited person in possession of a firearm inasmuch as on September 6, 2012, the defendant was at a residence located in Campbell's Creek, Kanawha County, West Virginia, in possession of a loaded revolver and was in possession of that same firearm when he visited Dallas Elswick at his home in Blunt, West Virginia, located about ten miles from the residence located in Campbell's Creek; (2) the defendant committed the federal and state offense of possession with intent to distribute marijuana inasmuch as on September 6, 2012, the defendant was at a residence located in Campbell's Creek, Kanawha County, West Virginia, at which time he was in possession of 13.8 ounces of marijuana for distribution purposes; and (3) the defendant violated the standard conditions that he not possess a firearm and that he not possess a controlled substance except as prescribed by a physician for the

reasons set forth in (1) and (2) above and as set forth in the petition on supervised release. In addition, the defendant stipulated on the record of the hearing that the government possesses sufficient evidence to prove the violations specified above by a preponderance of the evidence.

And the court finding, as more fully set forth on the record of the hearing, that the violations warrant revocation of supervised release and, further, that it would unduly depreciate the seriousness of the violation if supervised release were not revoked, it is ORDERED that the supervised release previously imposed upon the defendant in this action be, and it hereby is, revoked.

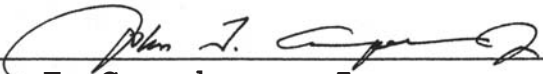
And the court having complied with the requirements of Rule 32(a)(1)(B) and (C) of the Federal Rules of Criminal Procedure, and finding, after considering the factors set forth in 18 U.S.C. § 3583(e), that the defendant should be confined to the extent set forth below, it is accordingly ORDERED that the defendant be, and he hereby is, committed to the custody of the United States Bureau of Prisons for imprisonment for a period of TIME SERVED as of May 26, 2015, to be followed by a term of one (1) year of supervised release upon the standard conditions of

supervised release now in effect in this district by order entered June 22, 2007, and the further condition that the defendant not commit another federal, state or local crime. In view of the defendant's documented need for psychiatric and psychological treatment, the defendant shall abide by the special condition that he participate on an in-patient basis in the psychiatric care program at the Mildred Mitchell-Bateman Hospital in Huntington, West Virginia, for a period of five (5) months beginning on May 26, 2015, during which period the defendant shall comply with all the rules and regulations of that facility. The defendant shall be released from custody to the Mildred Mitchell-Bateman Hospital on May 26, 2015, and the United States Marshals Service is directed to transport the defendant directly from the South Central Regional Jail to Mildred Mitchell-Bateman Hospital located at 1530 Norway Avenue, Huntington, West Virginia, 25709, and release him into the custody of the hospital and Melinda Smith, Director of Admissions. Once released from Mildred Mitchell-Bateman Hospital, the defendant shall participate in a mental health program as directed by the probation officer.

The defendant was remanded to the custody of the United States Marshal.

The Clerk is directed to forward copies of this written opinion and order to the defendant, all counsel of record, the United States Probation Department, and the United States Marshal.

DATED: May 26, 2015



John T. Copenhaver, Jr.
United States District Judge